

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ARTURO CRUZ

Plaintiff,

v.

T-MOBILE USA, INC.,

Defendant.

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CIVIL ACTION NO.

NOTICE OF REMOVAL

T-Mobile USA, Inc. (“T-Mobile” or “Defendant”) notifies the Court, pursuant to 28 U.S.C. §§ 1441 and 1446(a), of the removal of the action styled *Arturo Cruz v. T-Mobile USA, Inc.*, Cause No. CL-22-0523-F, filed in the County Court of Law #6 of Hidalgo County, Texas (the “State Court Action”).

Defendant removes this case on the grounds of this Court’s original diversity jurisdiction of civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. §§ 1332(a)(1), 1441(a). Defendant states as follows:

1. Plaintiff filed the State Court Action on February 22, 2022. Plaintiff served Defendant with citation and a copy of Plaintiff’s Original Petition (the “Petition”) on February 25, 2022, so this removal is timely. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999).

2. In accordance with Local Rule 81, Defendant attaches an Index of Matters Being Filed with this Notice of Removal as Exhibit A. Attached as Exhibit B is a list of all counsel of record. Attached as Exhibits C to E are true and correct copies of all process, pleadings, and orders

that have been served or filed in the State Court Action. Attached as Exhibit F is a copy of the State Court Action Docket Sheet.

3. Plaintiff in the State Court Action avers that he resides in Hidalgo County, Texas. *Petition* ¶ 2. On information and belief, Defendant asserts that Plaintiff was at the time of filing of the Petition in the State Court Action, and is now, a citizen of the State of Texas. Further, Defendant was, at the time of filing of the Petition, and is now, completely diverse. T-Mobile is a Delaware Corporation with its principal place of business in the State of Washington. Thus, because Plaintiff is a citizen of Texas and Defendant is a citizen of the States of Delaware and Washington, complete diversity of citizenship exists between Plaintiff and Defendant. 28 U.S.C. § 1332(c)(1), 1441(b).

4. The amount-in-controversy requirement is met under established Fifth Circuit law. Plaintiff's Petition in the State Court Action alleges Defendant violated Chapter 21 of the Texas Labor Code ("Chapter 21"), formerly known as the Texas Commission on Human Rights Act through color discrimination and national origin discrimination, including an alleged wrongful termination. *Petition* ¶¶ 21-24. Plaintiff seeks damages including actual damages, back pay, front pay, loss of earnings in the past, loss of earning capacity, and loss of benefits. *Petition* ¶ 25. Plaintiff claims that his alleged loss of earning capacity will "in all probability, be incurred in the future." *Id.* Plaintiff also seeks the recovery of past medical care and expenses that he says he incurred in the past, as well as future medical care and expenses which he says "will in all reasonable probability be incurred in the future. *Id.* Plaintiff further seeks an award of exemplary damages. *Petition* ¶ 26.

5. Based on Plaintiff's allegations and request for damages, it is facially apparent that the amount in controversy exceeds \$75,000, exclusive of interests and costs. *See Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

6. Accordingly, this case is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and is one that may be removed to this Court pursuant to 28 U.S.C. § 1441(a) and (b) inasmuch as this is a civil action brought in a state court over which this Court has original jurisdiction, in which the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity of citizenship between the parties.

7. The factual allegations made in this pleading will be supported by affidavit or other summary-judgment-type evidence should the Court so request. *See Allen*, 63 F.3d at 1336 (facts supporting removal ordinarily should be set out in the removal petition and the court can later require summary-judgment-type evidence should questions about jurisdiction remain); *Burden v. General Dynamics Corp.*, 60 F.3d 213, 217 (5th Cir. 1995).

8. This action may be removed to the United States District Court for the Southern District of Texas, McAllen Division, because the action is pending in Hidalgo County, Texas, which is within the jurisdiction of the McAllen Division. 28 U.S.C. §§ 124(b)(7), 1446(a).

9. Defendant will give written notice of the filing of this Notice to Plaintiff and will file a copy of this Notice with the Clerk of the state court pursuant to 28 U.S.C. § 1446(d).

10. Defendant therefore removes the State Court Action to this Court, and requests that the Court issue any orders necessary to stay proceedings in the State Court Action and assume jurisdiction over this action for all purposes.

Dated: March 22, 2022.

Respectfully submitted,

/s/ Micah R. Prude

Micah R. Prude, attorney-in-charge
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed electronically through the Court's ECF system and served by certified mail, return receipt requested on this 22nd day of March, 2022, on all counsel of record as listed below:

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Attorney for Plaintiff

/s/ Micah Prude

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